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In re Patent No. 7,040,490 :
Issue Date: May 9, 2006 : **DECISION DISMISSING PETITION**
Application No. 10/603,758 : **UNDER 37 CFR 1.78(a)(3)**
Filed: June 25, 2003 :
Attorney Docket No. 2000P13027WOUS :

This is a decision on the petition under 37 CFR 1.183, filed March 20, 2006, requesting waiver of 37 CFR 1.78(a)(3) as that rule operates in conjunction with 37 CFR 1.17(t), and a decision on the petition under 37 CFR 1.78(a)(3), filed April 28, 2006, to accept an unintentionally delayed claim under 35 U.S.C. § 120 and 365(c) for the benefit of priority to prior-filed PCT Application No. PCT/EP01/14300, filed December 5, 2001, set forth in the accompanying Application Data Sheet.

The petition under 37 CFR 1.183 is **DISMISSED** as moot in view of the request filed April 28, 2006, withdrawing the petition to waive the surcharge fee requirement of 37 CFR 1.78(a)(3). No fee has been assessed to petitioner's deposit account for the petition under 37 CFR 1.183.

The petition under 37 CFR 1.78(a)(3) is **DISMISSED**.

A review of the file record fails to disclose that a claim for the benefit of priority to the above-noted, prior-filed nonprovisional application was made within the time period set forth in 37 CFR 1.78(a)(2)(ii) and further failed to include a proper reference to the prior-filed application as required by 37 CFR 1.78(a)(2)(i) and 1.78(a)(2)(iii).

The instant application was filed June 25, 2003. Therefore, since this application was filed after November 29, 2000, a petition under 37 CFR 1.78(a)(3), along with submission of a Certificate of Correction, is the appropriate avenue of relief to accept a late claim for the benefit of priority to a prior-filed nonprovisional application after issuance of the application into a patent. *See* MPEP 1481.

The instant petition lacks a Certificate of Correction submission as well as the \$100 Certificate of Correction fee.

Before the petition under 37 CFR § 1.78(a)(3) can be granted, a renewed petition under 37 CFR § 1.78(a)(3) and a Certificate of Correction submission as well as the \$100 Certificate of Correction fee will be required.


Further correspondence with respect to this matter should be addressed as follows:

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Any inquiries concerning this decision may be directed to David Bucci at (571) 272-7099.


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